

PROGRESSIVE DISCIPLINE OF COUNTY STAFF: POLICY AND PERFORMANCE

SUMMARY

With more than 2,400 people on the payroll, the county government is San Luis Obispo County's largest employer. Most employees are competent and hard working, but inevitably a handful fail to measure up. Employees who fail to perform (along with a few who cheat, steal or otherwise go astray) face progressive discipline. The Grand Jury found that, in general, the county government's discipline system works well. We also found that with better training some supervisors could make it work better.

METHOD

To complete our review, members of the Grand Jury:

- Interviewed key county executives, an employee organization officer and a member of the Civil Service Commission
- Studied relevant public documents including personnel policies and discipline procedures
- Examined confidential statistical records in the county Department of Human Resources
- Studied selected confidential personnel files and records of individual employees who were the subject of disciplinary action

NARRATIVE

Along with the rest of the nation, San Luis Obispo County currently struggles with the worst economic climate since the Great Depression. Revenues from taxes and fees have declined and the Board of Supervisors has been compelled to reduce public services. The number of budgeted positions in the county for fiscal year 2010-2011 is 134 fewer than the prior year. Under these circumstances, county employees face challenges similar to those of people employed in the private sector. They are asked to do more with less. It stands to reason, therefore, that when any one of them fails to perform as required, remedial action is necessary.

County Personnel Policy: The Civil Service System

Since the early 20th Century, the great majority of public employees at all levels of government (national, state, local) have worked within the Civil Service System.¹ Hiring, evaluation and promotion decisions are to be made on merit. Employee recruitment and hiring decisions are based on applicant qualifications, examination scores and performance before interview panels. Promotions are similarly determined. For every job the civil service system requires a detailed job description and written standards of performance.

Probationary Period. Upon initial hire, county civil services employees serve a period of probation.² During this time they are subject to regularly scheduled performance evaluations, usually every three months. It is the new hire's responsibility to show that he or she can do the job. If their work is unsatisfactory, probationary employees are not retained.

Permanent Employee Status. Once an employee successfully completes the probationary period, his or her status advances to permanent. The County's Civil Service System presumes that permanent employees have shown that they are doing the job for which they were hired and

¹ A small number of employees, mostly high-level executives are hired "at will" by the County Chief Administrative Officer or the Board of Supervisors. They are not part of the civil service system. Their employment status is defined by individual contracts and normally they can be terminated without cause.

² Some persons are hired to temporary positions; their jobs simply end when the work is done.

therefore they are entitled to protection from unjustified firing. Consequently, any adverse personnel action taken against an employee must be founded upon performance that is unsatisfactory or a serious violation of some established standard (e.g. theft of county property, lied to supervisor, etc). The burden of proof rests with the county.

Progressive Discipline Policy: Efforts to Improve Employee Performance

Both probationary and permanent employees undergo regular performance evaluations and the documentation is placed in the individual's personnel file. If an employee's work or work related behavior is found to be deficient, but possibly remediable, the supervisor's first response is "Informal Counseling." When the supervisor suspects that the cause may be substance abuse, a medical problem or other factors outside the work place, the employee may be encouraged to seek help from a physician, other professional or the county's Employee Assistance Program. When informal counseling fails to resolve the issue the formal system of progressive discipline begins.

Step 1: Supervisory Correction. The supervisor is required to discuss the problem directly with the employee, making clear what is amiss and what the employee needs to do to set matters right. A written record of the discussion is made and placed in the employee's personnel file.

Steps 2, 3, 4, 5, 6: The "Work Performance Memo." When discussion with the employee fails to correct the problem, the supervisor drafts a Work Performance Memo (WPM) that specifically outlines the ways in which the employee's work needs to improve. This may involve the quality or quantity of work, being late to work or late with work products, poor relations with colleagues, not treating members of the public with respect, or other serious performance deficiencies. The memo also lists what the employee needs to do to fix the problem(s), how progress in that direction will be monitored and possible outcomes (up to and including termination) if the needed improvements are not forthcoming. The WPM draft is reviewed and discussed with the supervisor's immediate superior and the department head. With their input the WPM is then presented to and discussed with the employee.

Steps 7, 8, 9: Within 90 days (sometimes less) an employee issued a WPM should be performing satisfactorily. During that time the supervisor regularly discusses progress (or lack of same) with the employee. If adequate progress is made that fact is documented and the employee reminded that he or she needs to continue to meet the articulated standards. If improvements are marginal, the period of the WPM may be extended. If performance continues below par, disciplinary action progresses.

Progressive Discipline Policy: When the Performance Is Unsatisfactory

While the Civil Service system provides permanent employees with job protection as long as they perform well, it is not designed to protect those who's work, attitudes or behavior fail to meet articulated standards. Such employees may be disciplined.

Investigations of Employee Performance: From time-to-time supervisors discover or suspect that an employee is behaving in ways that are simply unsatisfactory. In those situations a county management employee is usually appointed to conduct an investigation of the matter.

Infrequently, the county contracts with an outside firm or individual to do the investigation. In one case reviewed by the Grand Jury it appears that the contracted investigator's report was at best sloppy and at worst incompetent. But that case appeared to be an exception; other investigative reports were found to be professional and well done.

In some instances, especially when there is the possibility of criminal or other serious misbehavior, the employee is placed on "administrative leave" while an investigation of the matter is conducted. Compensation continues. Employees on administrative leave are normally barred from the work place, but must remain in contact with their department, available to answer questions about the matter and/or return to work when called. While on administrative leave, the employee may be interviewed by the investigator.

According to information provided by the County's Human Resources Department, a total of 60 employees were placed on administrative leave between January 1, 2007 and October 31, 2009. During this 34-month period, the average administrative leave lasted 31 workdays and total

payroll cost for all 60 employees involved was \$519,460. Half a million dollars is a lot of money but less than 1/10th of 1% of the county's cost of operations during the period. As with other personnel actions, the fact that an employee is placed on administrative leave seldom becomes public knowledge. By law, personnel matters are confidential. However, these cases occasionally come to light and are reported in the press.³

Progressive Discipline: Sanctions

Letter of Reprimand: The formal reprimand is a letter to the employee that indicates specifically that some aspect of his or her work is unsatisfactory. A copy of the letter goes into the employee's personnel file and presumably would be noted in the next regular performance evaluation. Reprimands are adverse evidence if the employee seeks job advancement.

Suspension: An employee may be suspended without pay for a defined number of days. Such action could follow a WPM or reprimand. It could also be ordered immediately for a serious on the job failure (e.g. sleeping on duty) even if there had been no previous disciplinary action.

Demotion: When demoted, the employee is placed in a lower job classification and a pay rate adjustment may be made. This is a serious, but uncommon action. It is appropriate when evidence clearly indicates that the employee is unable to perform his or her current job appropriately, but could be successful at a lower level.

Termination: The employee is fired. This action may be taken as the result of progressive discipline (lesser punishments failed to resolve the problem) or immediately for the most serious reasons (e.g. workplace violence, theft, dishonesty).

Appeals: Employees subject to disciplinary actions have certain rights. Once the supervisor determines that discipline is necessary the employee receives a written notice that details the

³ Occasionally, employees are discharged for criminal actions. In those cases, the matter is normally referred to law enforcement. If criminal charges are filed, those become a matter of public record regardless of the outcome in the courts.

problem(s), the proposed discipline and informs the employee that he/she is entitled to rebut or justify her/his actions in writing or orally in a meeting with the supervisor. The employee can be represented at that meeting which is called a “Skelly Hearing.”⁴ If after that proceeding the employee still wishes to appeal the imposed discipline, she/he is entitled to a hearing before the Civil Service Commission which has authority to set aside the disciplinary action when it finds that established written standards were not met.

Progressive Discipline In Practice: How Established Policy is Carried Out

Occasionally, an otherwise competent and hardworking employee may engage in behavior that is illegal or otherwise wholly unsatisfactory. He/she might lie to a supervisor about work done or not done or might steal county equipment. Under such circumstances the employee could be promptly disciplined. At one extreme an employee caught taking cash would, most likely, be terminated and the case referred to law enforcement. But the first time an employee was found dozing on the job, might only result in a letter of reprimand.

When the problem is one of work place performance (e.g. frequent tardiness, making too many mistakes, treating fellow employees or public customers rudely) the employee should be counseled by the supervisor and if not resolved, the deficiency should be clearly documented in a regular or special performance evaluation that is provided to the employee and entered into the personnel file. This is an important task of the supervisor; insuring that it is done is a key responsibility of the supervisor’s boss. Still, discipline is seldom pleasant and often difficult. As a consequence, appropriate training for supervisors is essential if the progressive discipline system is to work well. County Human Resources officers told the Grand Jury that all supervisors receive a full day of such training. They also provided sample resources (e.g. manuals and names of specialists to call for guidance). We were told that in spite of recent budget reductions this training will continue. A Civil Service Commissioner suggested that a single day of training is probably insufficient to equip supervisors to handle disciplinary issues.

⁴The name comes from an appeals court ruling that the employee is entitled to written notice, the right to respond and a hearing: *Skelly v. State Personnel Board* (1975) 15 Cal. 3d 194.

Progressive Discipline: Recent Activity

In the course of our inquiry the Grand Jury asked the County's Human Resources Department to provide us with a listing of all disciplinary actions that the county undertook between January 1, 2007 and October 31, 2009. We were provided with a confidential statistical summary of several dozen cases. Seven employees were terminated, eleven were issued Notices of Suspension, three were demoted and eleven issued letters of reprimand. In a few cases suspended employees also signed "Last Chance Agreements" in which they acknowledge their problem(s) and recognized that if they failed again they would be terminated. During the period of time in question, eight employees who faced possible termination resigned and two others retired. A few cases were still in progress at the time of our inquiry. During this 34-month period a total of 42 (about 1.5%) of the county's employees were formally disciplined.

Progressive Discipline: Assessments

Supervisors occasionally fail either to notice or document employee behavior that falls short. In our review of the personnel files of employees who were later disciplined, the Grand Jury found three instances in which the employee's ratings on given items (e.g. treating employees with respect) were repeatedly marked "satisfactory" when subsequent investigation revealed that the behavior had been unacceptable. We were unable to determine whether those ratings were (1) simply oversights by the supervisor; (2) inaccurately positive because the supervisor chose to not document inadequacies; (3) the supervisor did not have the courage or the skill to provide the employee with honest feedback regarding performance problems; or (4) some other reason.

We sought explanations from management in Human Resources, an employee association executive and a member of the Civil Service Commission. The employee representative tended to fault supervisors when things were amiss. We were told that documentation of unacceptable performance or "wrong doing" is sometimes inadequate, an opinion our review of personnel files occasionally seemed to confirm. On the other hand, union officials have been known to tell members who went wrong "they've got you dead to rights." Interviewees from management, labor and the Civil Service Commission concurred that supervisors and managers need to be trained in and comfortable with their duty to both document and provide employees with candid

feedback, especially when there are problems on the job. This requires courage on part of the supervisor.

FINDINGS

1. San Luis Obispo County's policies governing Progressive Discipline are appropriate.
2. In general, the County's Progressive Discipline system is functioning well.
3. Because personnel matters are confidential the public is generally unaware of disciplinary actions taken when an employee's work is unsatisfactory or other behavior violates established expectations.
4. Employees who fail to meet appropriate standards are subject to disciplinary actions up to and including termination.
5. During the 34-month period examined by the Grand Jury, 42 employees were disciplined. Of those 19 were terminated, resigned or retired while facing discipline.
6. It appears that occasionally employees whose performance is unsatisfactory are not put on appropriate notice or disciplined. Whether that is the result of supervisor oversight or other reason could not be determined.
7. County managers and supervisors are given at least basic training relating to their employee discipline obligations and responsibilities. Whether they get enough training is questionable and subject to debate.

RECOMMENDATIONS

1. The County should continue to require mandatory training in progressive discipline to all supervisors and managers.
2. The amount of training should be increased and all supervisors and managers should, on a regular basis, receive "refresher" training which reinforces the importance of the immediate supervisor for an effective Progressive Discipline program.

REQUIRED RESPONSES

The San Luis Obispo County Human Resources Department is required to respond to Recommendations 1 and 2. The response shall be submitted to the Presiding Judge of the San Luis Obispo Superior Court by **June 29 2010**. Please provide a copy of all responses to the Grand Jury as well.

The San Luis Obispo County Board of Supervisors is required to respond to Recommendations 1 and 2. The response shall be submitted to the Presiding Judge of the San Luis Obispo Superior Court by **July 29, 2010**. Please provide a copy of all responses to the Grand Jury as well.

The mailing addresses for delivery are:

Presiding Judge	Grand Jury
Presiding Judge Charles S. Crandall Superior Court of California 1050 Monterey Street San Luis Obispo, CA 93408	San Luis Obispo County Grand Jury P.O. Box 4910 San Luis Obispo, CA 93402